



Public Hearing

Enforcement Rulemaking for Appliance Efficiency Standards

California Energy Commission

October 20, 2014

John Nuffer, Project Manager
Appliances & Existing Buildings Office
Efficiency Division
916-653-5851
John.Nuffer@energy.ca.gov

Galen Lemei, Staff Counsel
Office of the Chief Counsel
916-654-4873
Galen.Lemei@energy.ca.gov



Agenda

- ❖ Welcome & Housekeeping
- ❖ Opening Remarks
- ❖ Background
- ❖ Public Comments on Proposed Regulations
- ❖ Additional Public Comments
- ❖ Next Steps
- ❖ Closing Remarks



Background

Appliance Efficiency Regulations

- ❖ California Code of Regulations (CCR) Title 20 Sections 1601-1608
- ❖ Any unit of any appliance within the scope of Section 1601 may be sold or offered for sale in California only if the manufacturer has tested, marked, and certified the appliance complies with applicable energy and water performance, design, and efficiency standards. (20 CCR Section 1608)
- ❖ Removing an appliance from database for non-compliance



Background

SB 454 Enforcement Authority

- ❖ Authorized assessment of penalties up to \$2500 per violation of the Appliance Efficiency Regulations
- ❖ Required 7 factors be considered by a court or the Energy Commission in assessing penalties
- ❖ Specified penalties may be assessed through either a civil action, or an administrative process to be adopted by the Energy Commission through regulation.
- ❖ Required administrative enforcement conducted pursuant to the existing formal hearing process set forth in Gov. Code Section 11500 *et seq.*
- ❖ Process for assessing penalties separate from process for decertifying non-compliant appliances.



Background

The Process & Public Participation

- ❖ Senate Bill 454 (Pavley, Chapter 591) (January 2012)
- ❖ Public Scoping Workshop (March 2012)
- ❖ Staff Developed Draft Regulations (Mar 12 - Feb 14)
- ❖ Public Workshop on Draft Regulations (February 2014)
- ❖ Staff Revised Draft Regulations (Feb 14 - Aug 14)
- ❖ Published Proposed Regulations (August 2014)
- ❖ Accepting & Considering
Public Comments (Since August)



Proposed Regulations

California Code of Regulations Section 1609:
Administrative Civil Penalties

Format for Discussion

- ❖ Briefly describe the purpose of each new subsection of 1609
- ❖ Where we made changes to address your comments
- ❖ Comments welcome after discussion of each subsection



Proposed Regulations

California Code of Regulations Section 1609:
Administrative Civil Penalties

New Section 1609: Administrative Civil Penalties

- ❖ 1609(a): Violations Subject to Administrative Civil Penalties
- ❖ 1609(b): Assessment of Administrative Civil Penalties
- ❖ 1609(c): Notices of Violation
- ❖ 1609(d): Settlement
- ❖ 1609(e): Administrative Proceedings
- ❖ 1609(f): Other Enforcement Procedures
- ❖ 1609(g): Judicial Review



What's a Violation?

Section 1609 (a): Violations Subject to Administrative Civil Penalties

Section 1609(a)(1)

- ❖ **Purpose:** Specify who may be liable for not certifying compliance
- ❖ **Workshop language:** “Any act or omission...” is a violation
- ❖ **Proposed language:** 1609(a)(1) clarifies that...
 - offering to sell or selling an appliance without certifying compliance is a violation
 - that a violation may occur for each unit of an appliance
 - that anyone offering to sell or selling such an appliance may be in violation



What's a Violation?

Section 1609 (a): Violations Subject to Administrative Civil Penalties (con't)

Section 1609 (a)(2)

- ❖ **Purpose:** Specify who may be liable for not testing, marking, certifying, or meeting the efficiency standards
- ❖ **Workshop language:** “Any act or omission...” is a violation
- ❖ **Proposed language:**
 - Clarifies that manufacturers, importers and distributes may be liable
 - Unless the appliance was not intended for sale in California



What's a Violation?

Section 1609 (a): Violations Subject to Administrative Civil Penalties (con't)

Section 1609 (a)(3)

- ❖ **Purpose:** Specify that providing false information is a violation
- ❖ **Workshop language:**
“Any person who makes a false statement..”
- ❖ **Proposed language:**
“Any person who “knowingly provides materially false formation...”
is in violation



What's a Violation?

Section 1609 (a): Violations Subject to Administrative Civil Penalties

Comments on Section 1609 (a)?

- ❖ What is a violation?
- ❖ Who may be liable?
- ❖ Other?



Assessment of Penalties

Section 1609 (b): Assessment of Administrative Civil Penalties

Section 1609 (b)(1)

❖ **Purpose:** Specify penalties may be assessed per unit

❖ **Workshop language:**

A penalty may be assessed for “each violation.”

❖ **Proposed language:**

A penalty may be assessed for “each unit that was sold or is offered for sale,” in violation, and for each false statement



Assessment of Penalties

Section 1609 (b): Assessment of Administrative Civil Penalties (con't)

Section 1609 (b)(2)

- ❖ **Purpose:** Specify that more than one person may be responsible for a violation.
- ❖ **Workshop language:** Did not specify.
- ❖ **Proposed language:** Commission may apportion liability among responsible persons.



Assessment of Penalties

Section 1609 (b): Assessment of Administrative Civil Penalties (con't)

Section 1609 (b)(3)

❖ **Purpose:** Specify nine factors that must be considered in assessing administrative civil penalties

❖ **Proposed language:**

- (b)(3)(B): Combined two statutory factors into one -- ("persistence" of a violation and number of violations)
- (b)(3)(F): Added a factor ("the number of persons responsible for the violation.")
- (b)(3)(H) &(I): Added two mitigating factors



Assessment of Penalties

Section 1609 (b): Assessment of Administrative Civil Penalties

Comments on Section 1609 (b)?



Notices of Violation

Section 1609 (c)

Section 1609 (c)

❖ **Purpose:** Specifies content of Notice of violation

❖ **No change**

❖ **Comments?**



Settlement

Section 1609(d)

Section 1609 (d)

- ❖ **Purpose:** Specifies that settlement is an option, and may include appropriate sanctions and remedies
- ❖ **No change**
- ❖ **Comments?**



Administrative Proceedings

Section 1609(e)

Section 1609 (e)

- ❖ **Purpose:** Specifies the process that must be followed before a penalty may be imposed
- ❖ **No change**
- ❖ **Comments?**



Other Enforcement Procedures

Section 1609(f)

Section 1609 (f)

- ❖ **Purpose:** Specifies that the Energy Commission may take other actions as authorized by law
- ❖ **No change**
- ❖ **Comments?**



Judicial Review

Section 1609 (g)

Section 1609 (g)

- ❖ **Purpose:** Specifies that a penalty imposed by the Energy Commission shall be subject to judicial review
- ❖ **No change**
- ❖ **Comments?**



Additional Public Comment

- ❖ Please feel free to comment or ask questions about anything related to the rulemaking process or documents
- ❖ Please state your name and affiliation
- ❖ Leave business card with Court Reporter



Next Steps

- ❖ Commission reviews all comments
 - Consider whether to adopt or revise regulations
 - if substantive revisions to proposed regulations, then additional 15 day public comment period
- ❖ Commission considers and adopts regulations
- ❖ Commission prepares and submits to the Office of Administrative Law a Final Statement of Reasons, responding to all substantive comments.



Closing Remarks

Thank you for participating!

John Nuffer, Project Manager

916-653-5851

John.Nuffer@energy.ca.gov

Galen Lemei, Staff Counsel

916-654-4873

Galen.Lemei@energy.ca.gov

Appliance Efficiency Enforcement Rulemaking
(<http://www.energy.ca.gov/appliances/enforcement/>)